

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANTS: HONORABLE SODY CLEMENTS, )  
an Individual and Oklahoma Resident on behalf of )  
herself and others similarly situated; LT. GENERAL )  
(Ret.) RICHARD A. BURPEE, an Individual and )  
Oklahoma Resident on behalf of himself and others )  
similarly situated; JAMES PROCTOR, an Individual and )  
Kansas Resident on behalf of himself and others )  
similarly situated; RODD A. MOESEL, an Individual and )  
Oklahoma Resident on behalf of himself and others )  
similarly situated; RAY H. POTTS, an Individual and )  
Oklahoma Resident on behalf of himself and others )  
similarly situated; BOB A. RICKS, an Individual and )  
Oklahoma Resident on behalf of himself and others )  
similarly situated. )

CAUSE No. PUD 201500344

**FILED**  
SEP 15 2015

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

RELIEF SOUGHT: VACATE OR MODIFY OKLAHOMA )  
CORPORATION COMMISSION ORDER No. 341630, )  
CAUSE No. PUD 260; AND REDETERMINE ISSUES )  
FOLLOWING INTRINSIC FRAUD )

IN THE MATTER OF THE APPLICATION OF )  
HOWARD W. MOTLEY, JR., FOR AN INQUIRY )  
INTO THE EFFECT OF THE 1986 TAX )  
REFORM ACT ON OKLAHOMA UTILITIES )  
)

CAUSE No. PUD 860000260

IN THE MATTER OF THE APPLICATION OF )  
HOWARD W. MOTLEY, JR., FOR AN INQUIRY )  
INTO THE RATES AND CHARGES OF )  
SOUTHWESTERN BELL TELEPHONE )  
COMPANY. )

CAUSE No. PUD 890000662

*Bob*

Statement by Corporation Commissioner Bob Anthony made on 23 July 2014 to  
Oklahoma Supreme Court Referee in Cause No. 112,973 [with reference attachments]

Comments by Corporation Commissioner Bob Anthony on 23 July 2014 made to  
Oklahoma Supreme Court Referee in Cause No. 112,973

Thank you very much sir. I truly am thankful to have this opportunity. I kinda estimate that you have about a thousand pages before you, and I would like to bring your attention to *seven [7]* that I think are the most important. The first three go together, and the last two go together. So I will start though with my first reference which is **Exhibit 12 of** Mayor Clements and General Burpee, and I am calling them **Applicants**. The *first [#1]* of those pages I wish to bring to your attention is the **signature page** of a Commission Order. And that exhibit is a Commission **Order dated June 23, 1987**. That's about a week or seven days before the effective date of the Tax Reform Act. The time was running out. The [SWBT] company did not want to get the same treatment that all the other public utilities essentially across the United States were willing to [have, and it] wanted a special consideration. So there was a Stipulation entered into. And this [is the] Order adopting the Stipulation and the two-page Stipulation, to me, is the entire foundation of the Southwestern Bell 260 case that is before us today. The ordering section, the one just above the signatures on the page, says, if the, if the commission "ultimately determines" and [this is] my position, ... "if the commission ultimately determines that a rate reduction is required for Respondent, Southwestern Bell Telephone Company, that said reduction shall be effective July 1, 1987." So there were a few days before July 1, 1987. This is the wording from the Commission Order.

The *next page [#2]* of the three together that I wish to mention is the **Attachment** to that Order which is the **two-page Stipulation**. On the front page of that Stipulation, they have **numbered paragraphs**, and I make reference to **number 4**, which essentially repeats what I just read to you, but it's a little different. It says,

“if the commission,” by the way when it says “if the commission” it doesn’t say “within 30 days,” “within 3 years,” “within 10 years,” it says “if the commission, after hearing, ultimately determines a rate reduction is appropriate for Respondent,” and then it adds some new words, “taking into account all known and measurable changes in the Respondent’s business, that said reduction shall be effective July 1, 1987.” “Taking into account all known and measurable changes,” that’s looking forward, that is anticipating perhaps some future time frame. The provision that is put here in regulatory words, in regulatory law, to me is called “revenues subject to refund” or sometimes it is called “rates under bond.” And when I come to the last of the pages I wish to make reference to that word “bond” is going to come up again. For your information, there were two subsequent orders that made reference to compound interest under this arrangement, and the compound interest was followed with the word “annual” so you might see that there was an anticipation of an obligation that goes into the future. The *third page* [#3] that I would bring to your attention is the second page of this Stipulation, and it is a signed Stipulation, signed by an attorney for the Commission and signed by an attorney for Southwestern Bell. I am told it is what is called a legally binding document.

The *next page* [#4] I’d like to bring to your attention, I find it twice in **AT&T’s Exhibits: it is No. 2 and also is Exhibit No. 10.** And what it is, is a response from the Attorney General to the request for legal briefs from Commissioner Anthony. That’s me. And on both occasions it is page 17. I am just wanting to bring this one page to your attention. I had asked a question about the record in what has been described as the companion case, the 662 case. And the answer which is at the top of the page reads as follows from the Attorney General. “The Evidentiary Record in Cause No. 662 could be incorporated into the record of a rehearing of

Cause No. 260 if it were to be determined to be relevant within the meaning of the Statute.” Yes, it had to have relevancy. As has already been explained, the 260 case, before even the bribed order was issued, issued an Order to say “Look, there are some more issues that need to come up. We’re going to do those later in the companion case, the 662 case.” So, here we have the Attorney General saying that both of these cases are about Southwestern Bell, both are rates cases and yes the record is available to the Commission.

Now if I may be so bold to suggest, what is the status of the 260 case? I would like to make a recommendation frankly. I think the status of the case needs to go back to the day before the bribed vote occurred. If there hadn’t been a bribed vote, the case would have been heard. It is under advisement by the commissioners. Does the commission need to reopen and reargue the 260 case? What the commission needs to do is to look at the record. Does the commission need the Attorney General to tell us what the record is? No. But it does help in this case because he said, of course, you can use the 662 record in the 260 case.

And notice, once again it says “taking into account all known and measurable changes.” The 662 case did not have “estimated” or (the order uh word in the Order is) a “projection” for the important year for 1989. It had actual numbers. It had audited numbers. It has already been mentioned that there were 37 days, I didn’t actually do the count, testimony and briefing and cross examination and there was a unanimous vote 3-0 to make a decision in the 662 case.

And I will just tell you the punch line is: That case found for the important year, which was the actual **test year**, over a 100 million dollars of “excess revenue” for that one year, compared to the bribed Order which had “estimated data” that was from 1986 and 87 that gave an “estimate” of 7.8 million dollars. Wow. That’s

about a 90 million dollar difference. The people of Oklahoma want a fair and honest determination for the Stipulation and what the Order calls “excess revenue.” And that’s just for one year and that’s not counting the compound interest.

So the *next page* [#5] I would like to make reference to is **page 9** of what we call the **bribed order that was issued September 20, 1989** [ **AT&T’s Exhibit No. 23** ]. I had been only a commissioner for about eight months. By the way, that Stipulation had been running for a year and half before I became a commissioner. I anticipated it would have been taken care of in a more timely fashion. Okay I’m trying to direct your attention to page nine your honor. It gives a number for 1987, it gives a number for 1988 and gives the 7.8 million dollar figure and uses the word “prospective” and the language here called this is a prospective figure. The hearing on this was held in January ‘89. The Order was [issued] in September ‘89, so obviously ‘89 had not even finished yet. So it was what we call an “estimate” or a “projection.”

Now for the *last two of my seven pages* [#6 and #7], and this is the last of the two to three pages that are in the blue bound volume of appendices that I provided the Court. I guess the first page tells, sort of tells, what it is. I made a “Freedom of Information” request to the FBI. Where there’s things blacked out here, that’s me, [my name that] they redacted. They didn’t redact Mr. William Anderson, the attorney, who passed the bribed money because he was deceased at the time [of the Freedom of Information request]. On **page 13** which is among the last two in my packet of exhibits is **Exhibit No. 12 for me**. It makes reference to the 260 case. Mr. Anderson says. And here is the sentence, “the test year doesn’t touch the top side involved of any of the issues.” He’s talking about the deficiency of the determination of the revenue deficiency, that’s the whole basis for refund or reinvestment, whatever you want to do with it. And he goes on to say “they,”

meaning the Staff, took a test year ending September 30 of '87 and tried to guess the rest of it. They could have had it done a long time ago. At the top of the *final page* [#7] that I'm referring to it says "you were", you being the commission, although this administrative law judge's report had issued at this time the commission decision hadn't. He said, "you were just guessing on the thing and right now you are two years after that." And at the very bottom of the page, the final sentence I think has tremendous significance; [SWBT attorney Bill Anderson] he's talking about the Stipulation. Remember the first three pages of the ones I think are the most important of this whole case. And he says the agreement, meaning the Stipulation agreement "to put it under bond from that point forward." Yes it was revenues subject to refund, it was rates under bond from that point forward, and with all due respect, that includes today, the Commission has not done its duty. We have a Stipulation, we have an Order, we are suppose to determine what the amount is, and we are being blocked from doing so because there was a bribed vote, and we have the "Henry decision" that we are saying the Commission lost jurisdiction.

Now I tried to tell you what I felt the *seven most important pages* were. I still want to say what I feel is the **most important issue** is. If I was given three words, I would say the issue of this case is "Does bribery win?" If I was given four words I'd say, "Do bribed votes count?" If I was given five words I'd say what's the most important issue is I'd say, "Is the bribed Order invalid?" And I think there is an obvious answer to that.

Now, I told my wife that there was something in this write-up that this was an "onerous fifth time around," and she said are they talking about the process whereby you were elected five times to a term of the Corporation Commission?

And I said, no they're talking about redoing this old case. In the response of AT&T, (so much for my attempt at humor), in the response of AT&T, how does AT&T describe Mr. Anderson? Well first of all, there was the Special Master of the Supreme Court Judge Myers who held a proceeding, and Glen Glass, he was the lead attorney for Southwestern Bell, attorney of record in both the 260 and 662 cases. He [Glass] was asked, "Is Mr. Anderson an accountant?" And he said, and I got the transcript here, he says, "he knows more about regulatory accounting than most people with an accounting degree." He [Glass] said, "I certainly believe that." [ pp. 51-52, Deposition of Glen A. Glass, Esq. on May 21, 1993 in OCC Cause No. PUD 890000662 ] And I totally agree with that too. Mr. Anderson helped write some of the regulatory how to do a rate case books and manuals at the Corporation Commission.

Okay, so when AT&T describes Mr. Anderson, they don't call him the AT&T attorney of record in the 260 case, although his name is listed on the cover page, they say things like this on page four of their Response. I'm talking about the FBI investigation. The FBI investigation covers that a "private outside attorney retained by Southwestern Bell Bill Anderson, had bribed Commissioner Hopkins to vote for the 1989 order." Still on page four they say "no employee of the Southwestern Bell Telephone was charged with, much less convicted of a crime," and on their conclusion page, their page 15, AT&T says, "the people who committed bribery have been punished." Now take those sentences that they represented to this Court, and contrast it with the Special Master report [ Anthony Exhibit No. 1 ]. Judge Myers' report, Judge Myers who was appointed by the Supreme Court, on page three, he names Dave Miller, he describes him as Southwestern Bell Telephone's Vice President, and Judge Myers writes that his, meaning Miller's, "cash and false lists" were "was no more or no less than in an

effort to have Commissioner Anthony look with favor on their pending rate matters.” That means bribery.

I really would like to emphasize two of the exhibits by the applicant. And they are **Applicant Exhibit No. 16 and 17**, and they’re submitted **by Attorney General Susan Loving** and Asst. Attorney General Robert Butkin, who personally I think are kind and honest and respectable people. Say, and by the way, when I make reference to what I fully believe is that multiple executives and multiple attorneys for Southwestern Bell Telephone were involved in bribery or attempted bribery or other forms of criminal conduct; I’m not talking about any of the attorneys that are representing people here today. I meant to clarify that. But moving right along, Susan Loving and Robert Butkin have this statement on **page 14, this is Exhibit 16 and 17 from the Applicants**. Quote. “Because Coonan, Ellis, Miller and Glass acted as agents for Southwestern Bell, their knowledge of wrongdoing is also imputed to the corporation.” Coonan was the president who helped provide money that was illegally given to influence commissioners. Ellis was his successor, another President of [SWBT] Oklahoma. Miller, as we discussed, was the vice president, and Glass was the lead attorney of record not as an outside attorney but an attorney for Southwestern Bell. Susan Loving, Attorney General, and Robert Butkin go on to say and they go on to say, and they quote Judge Myers Special Master’s report, says Judge Myers found that, and I guess these are important legal words, “but for”, found that but for Bell’s own illegal activities in connection with the rate proceedings, certain problems would not have existed. Loving and Butkin cite cases and law regarding “unclean hands” as well as legal doctrine that, “He that hath committed inequity shall not have equity.” Like “finality” perhaps. Anyway, they can cite those legal cases and their meaning of that much better than I.



I'm trying to tell you that this isn't Commissioner Anthony speaking. This is the report of the Special Master of the Oklahoma Supreme Court. Along those lines, it's my famous understanding that the highest court west of the Mississippi is the Tenth Circuit U.S. Court of Appeals and their Order and Judgment regarding the Hopkins appeal of his bribery conviction has the following words, "Southwestern Bell executives plotting their "story" in the event federal agents questioned them." There's a statement from the Tenth Circuit [ Applicant Exhibit 7 ]. And so people would have you think that it was Bill Anderson who was just an outside attorney misbehaving, is not consistent with these reports from what I consider the highest court-related and authorities in the land.

The last one I have to bring to your attention is paragraph 15 as put forth in my set of Exhibits. And this is the Title III FBI wiretap that was played in the criminal case here in the Western District of Oklahoma. And this is also described with details, the references and to the transcripts of the criminal trial as I said in paragraph 15 of my Response [Exhibit "A." Affidavit ] It says, in the conversation attorney Bill Anderson talks to attorney Bill Free about Southwestern Bell's efforts to quote, "pay off Hopkins." He goes on, Anderson says that Glen Glass, now this is a quote, "Glass knew the whole deal." Anderson went on say, "We all knew" referring to Southwestern Bell officials Dave Miller, the Vice President; Glen Glass, the attorney of record; Royce Caldwell, the President. Anderson says, (quote, this is what the jury heard from the Title III wiretap) "they all knew we were trying to work something." Anderson goes on to tell Bill Free, one of the three highest attorneys of the whole Southwestern Bell Corporation in St. Louis, he [Anderson] just happened to know him [Free] real well because he [Anderson] used to loan him [Free] money, and he [Free] used to be the head [SWBT] attorney in Oklahoma City. And that's from the transcripts that were

provided. He said, "Royce said he didn't want to know the details." He goes on to say, Royce Caldwell, at that time the President of the Oklahoma division of Southwestern Bell, "Do it and don't let me know how you do it." One of the details provided here. This is bribery and corruption.

Mr. Ellis, as the Attorney General **[Exhibits 16 and 17 of Applicants]** that I just tried to refer to, and then I'll stop with this, I hope. Mr. Ellis when he became the new President of Oklahoma, like they like to do, have a little meet and greet with me. I met him at my Chairman of Board office at the C. R. Anthony Company, and I asked him a question. By the way, I'm just telling you what's in the Exhibits from the Attorney General [Exhibits 16 and 17 of Applicants], and I am reading from the FBI transcripts. I said to them, I said, "what is my relationship with your Company?" Well, he said, "I know we've given you money which can be a little touchy." That was his words. He seemed to know something about it. I said to him, do you know that your Vice President has given money illegally to Commissioner Hopkins? He didn't know that. And he came back three or four days later and he told me, "I've destroyed my notes from our conversation." "Let's let sleeping dogs lie." End quote. "I'm not on a witch hunt." End quote. This is from the President [SWBT Oklahoma] who could have stopped this corruption. Who could have stopped this case? Excuse me. I am raising my voice. If we need "finality" it could have come a long time ago if some honest executives would have risen to the occasion to do something about it properly.

Alright, maybe I need to state one thing. My **Dissent in the bribed case [PUD 260]** is one page long, a full page. This issue about "refunds and reinvestments" is not the issue of this case. By the way I only used the word "refund" once. But I'll tell you another topic that I mentioned twice. Quote. "I feel a larger total amount could have been determined." Not that wimpy amount \$7.8 million, maybe

something more like \$100 million figure found in the 662 case. And I ended that paragraph by saying, "a higher profit amount could have been determined," repeating that, referring to the Yellow Pages issue.

The bribed vote should not count. The case ought to be sent back the Corporation Commission. And for this nonsense that all of this would be cumbersome, what if one commissioner, like me, made a motion, I accept all the regulatory decisions from the Oklahoma Supreme Court, all the financial and regulatory decisions in the 260 case itself, and there's only one exception, that is the important year of 1989. And I tell you what, instead of all these guesstimates, estimates and projections. Let's just use "the record" that already exists that was adopted with the decision 3-0 by the commissioners of the 662 case. Use a hundred million dollar for the figure from '89 and then calculate the numbers. I don't think that would take months and years and a long period of time. I know you've been very patient. I hope that I've not conducted myself other than what was appropriate. Thank you.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

HONORABLE SODY CLEMENTS, an Individual and Oklahoma Resident on behalf of herself and all others similarly situated; LT. GENERAL (Ret.) RICHARD A. BURPEE, an Individual and Oklahoma Resident on behalf of himself and all others similarly situated,

Petitioners,

v.

AT&T, INC., f/k/a SBC COMMUNICATIONS INC., f/k/a SOUTHWESTERN BELL CORPORATION, f/k/a SOUTHWESTERN BELL TELEPHONE COMPANY, a foreign corporation; SWBT, Inc., a foreign corporation d/b/a SOUTHWESTERN BELL TELEPHONE COMPANY, [itself d/b/a AT&T ARKANSAS, AT&T KANSAS, AT&T MISSOURI, AT&T OKLAHOMA, AT&T TEXAS, collectively d/b/a AT&T SOUTHWEST], f/k/a SOUTHWESTERN BELL TELEPHONE COMPANY, LP, a foreign Limited Partnership, f/k/a SOUTHWESTERN BELL TEXAS, INC, a foreign corporation, f/k/a SOUTHWESTERN BELL TELEPHONE COMPANY, a foreign corporation; STATE OF OKLAHOMA, ex rel. OKLAHOMA CORPORATION COMMISSION; ROBERT ANTHONY, in his Official Capacity as CHAIRMAN of the OKLAHOMA CORPORATION COMMISSION; PATRICE DOUGLAS, in her Official Capacity as VICE CHAIRMAN of the OKLAHOMA CORPORATION COMMISSION; DANA MURPHY, in her Official Capacity as COMMISSIONER of the OKLAHOMA CORPORATION COMMISSION; MCI TELECOMMUNICATIONS CORPORATION; AMERICAN ASSOCIATION OF RETIRED PERSONS; INCOG (INDIAN NATION COUNCIL OF GOVERNMENTS); CITY OF OKLAHOMA CITY; AT&T COMMUNICATIONS OF THE SOUTHWEST, INC; OKLAHOMA RURAL TELEPHONE COALITION; SOUTHWESTERN BELL YELLOW PAGES, INC.,

Respondents.

SUPREME COURT STATE OF OKLAHOMA

JUN 25 2014

MICHAEL RICHIE CLERK

CAUSE NO.

# 112973

FILED JUN 25 2014

COURT CLERK'S OFFICE - OKC CORPORATION COMMISSION OF OKLAHOMA

APPLICATION TO ASSUME ORIGINAL JURISDICTION, BILL OF REVIEW AND PETITION FOR WRIT OF MANDAMUS WITH BRIEF IN SUPPORT (Oral Argument Requested)

**FILED**  
JUN 26 2014

COURT CLERK'S OFFICE, OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED  
SUPREME COURT  
STATE OF OKLAHOMA  
JUN 26 2014

MICHAEL S. RICHIE  
CLERK

Thursday, June 26, 2014

THE CLERK IS DIRECTED TO ENTER THE FOLLOWING ORDERS OF THE COURT:

✓ 112,973 - HONORABLE SODY CLEMENTS, an individual and Oklahoma resident on behalf of herself and all others similarly situated, *et al.* v. AT&T, INC., f/k/a SCB COMMUNICATIONS, INC., f/k/a SOUTHWESTERN BELL CORPORATION, f/k/a SOUTHWESTERN BELL TELEPHONE COMPANY, a foreign corporation, *et al.*

Respondents are ordered to respond by no later than July 14, 2014.

Oral presentation to a Referee of this Court is set for July 23, 2014 at 10:30 a.m.

112,974 - CHARLES EDWARD PACK, II, *et al.* v. STATE OF OKLAHOMA, President *Pro Tempore* of the Oklahoma Senate, *et al.*

Respondents are ordered to respond by no later than July 9, 2014.

Oral presentation to a Referee of this Court is set for July 14, 2014 at 10:30 a.m.

  
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CHIEF JUSTICE

104300 1046

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF )  
HOWARD W. MILEY, JR., FOR AN ) CAUSE PUD NO. 000260  
INQUIRY INTO THE EFFECT OF THE 1986 )  
TAX REFORM ACT ON OKLAHOMA UTILITIES. ) ORDER NO. 313853

HEARINGS: June 23, 1986, before the Commission en banc.

APPEARANCES: Jane P. Olson for the Commission Staff,  
G. Michael Bauer for Southwestern Bell Telephone Company,  
Robert Butkin for Attorney General Robert Henry.

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BY THE COMMISSION:

The Corporation Commission of the State of Oklahoma being regularly in session and the undersigned Commissioners being present and participating, this Cause comes on for hearing.

Procedural History

On October 23, 1986, Applicant filed an application in PUD Cause No. 000260 requesting that the Commission quantify the effect of the 1986 Tax Reform Act on certain public utilities, including Respondent.

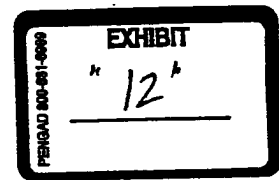
Respondent Southwestern Bell Telephone Company (Bell) and the other Respondent utilities participated in a Technical Conference conducted by the Commission Staff on November 10, 1986.

On June 10, 1987, Notice of Setting Hearing on the Rates of SWB was issued.

The Staff and Respondent entered into a Stipulation on June 23, 1987, whereby they agreed that if the Commission ultimately determines that a rate reduction is appropriate for Respondent, that said reduction would be effective as of July 1, 1987, in order to allow the full benefits of the Tax Reform Act to accrue to Respondent's customers.

Summary of Evidence

Dixie Linnenbrink, Manager of the Accounting Department of the Public Utility Division, appeared on behalf of the Commission Staff. Ms. Linnenbrink testified that the 1986 Tax Reform Act reduced the corporate income tax rate to 34% effective July 1, 1987 which equates to a 40% tax rate for the calendar year 1987. Ms. Linnenbrink further testified that the authorized rates of Respondent were based on an



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Cause No. 000260  
Page 2

income tax rate of 46%. Ms. Linmenbrink further testified that Staff and Respondent had entered into a Stipulation, wherein they agreed if the Commission ultimately determines a rate reduction is appropriate for the Respondent that the reduction would be effective July 1, 1987, in order to accomplish an effective tax rate of 40% for 1987 and a 34% tax rate prospectively. She further stated that due to the number of utilities being investigated and the limited resources of Staff it would be at least two or three months before Staff could complete an audit and investigation of Respondent's books and records and make a recommendation in this cause. She speculated that a hearing could be held in September or October on Respondent's rates. Ms. Linmenbrink testified that she therefore supported the Stipulation and recommended its adoption by the Commission.

Findings of Fact and Conclusions of Law

Upon full and fair consideration of the evidence and record in this cause, and being well and fully advised in the premises, the Corporation Commission makes the following findings and conclusions:

The Commission has jurisdiction in this Cause by virtue of the provisions of Article IX, Section 18 of the Oklahoma Constitution, 17 Okl. Stat. §131 et seq., and the Corporation Commission Rules and Regulations Governing and Regulating the Operations of Telephone Companies and Telecommunications in Oklahoma.

The Commission finds that the terms of the Stipulation are fair, reasonable and equitable and that it should be adopted. In accordance with the Stipulation, rates ultimately authorized in this case should reflect an income tax rate of 34% as of July 1, 1987; in order to allow the benefits of the 40% income tax rate for 1987 and a 34% tax rate prospectively to flow to the customers of Oklahoma. Therefore, a copy of the Stipulation is attached hereto, marked Attachment A, and incorporated by reference.

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Cause No. 000260  
Page 3


ORDER

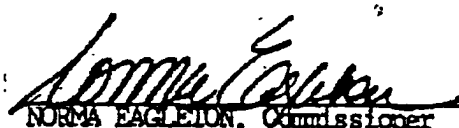
IT IS THEREFORE THE ORDER OF THE CORPORATION COMMISSION that the Stipulation, attached hereto as Attachment A, be and the same is hereby adopted.

IT IS FURTHER ORDERED that if the Commission ultimately determines that a rate reduction is required for Respondent, Southwestern Bell Telephone Company, that said reduction shall be effective July 1, 1987.

CORPORATION COMMISSION OF OKLAHOMA

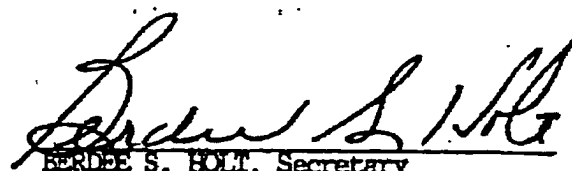
\_\_\_\_\_  
JAMES B. TOWNSEND, Chairman

  
\_\_\_\_\_  
BOB HOPKINS, Vice Chairman

  
\_\_\_\_\_  
NORMA EAGLETON, Commissioner

DONE AND PERFORMED this 23 day of JUNE, 1987

BY ORDER OF THE COMMISSION:

  
\_\_\_\_\_  
BERDEE S. HOLT, Secretary

BRC:kg



104300 1046  
ATTACHMENT "A"

FILED

JUN 23 1987

SECRETARY  
CORPORATION COMMISSION  
OF OKLAHOMA

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF )  
HOWARD W. MOTLEY, JR., FOR AN )  
INQUIRY INTO THE EFFECT OF THE 1986 )  
TAX REFORM ACT ON OKLAHOMA UTILITIES. ) CAUSE PUD NO. 000260

STIPULATION BETWEEN STAFF AND  
SOUTHWESTERN BELL TELEPHONE COMPANY

Howard W. Motley, Jr., Applicant, on behalf of the Public Utility Division (Staff) of the Oklahoma Corporation Commission and Southwestern Bell Telephone Company (Respondent), hereby stipulate and agree as follows:

1. The 1986 Tax Reform Act which was signed by the President of the United States on October 22, 1986, lowered the corporate income tax rate from 46% to 34%, effective July 1, 1987. Respondent's currently authorized rates and charges are based on a 46% income tax rate.
2. Applicant filed an application herein requesting that the Commission quantify the effect of the 1986 Tax Reform Act on certain public utilities, including Respondent.
3. An investigation and audit must be conducted by the Staff in order for Staff to make a final recommendation in this cause. Respondent and Staff further acknowledge that Staff's investigation and audit will not be completed for several months due to the number of utilities being investigated and the limited resources of Staff.
- ~~4. In order to allow the full benefits of the 1986 Tax Reform Act to accrue to the benefit of Respondent's Oklahoma customers, Respondent and Staff agree that if the Commission, after hearing, ultimately determines a rate reduction is appropriate for Respondent, taking into account all known and measurable changes in Respondent's business, that said reduction will be effective as of July 1, 1987.~~
5. All parties to this Stipulation will cooperate in seeking its acceptance and approval by the Commission. If this Stipulation is not accepted and approved by the Commission without modification or condition, then it shall not be binding

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-2-

on either party, and both parties shall in that event be deemed to have reserved all their respective rights and remedies in this proceeding.

6. It is agreed that nothing in this Stipulation shall constitute an admission by any part of the correctness or applicability of any claim, defense, rule or interpretation of law, allegation of fact, principle or method of ratemaking or cost of service determination. It is also agreed that, except as stated herein, the parties shall not be considered as necessarily agreeing with or conceding the applicability of any principle, method of ratemaking, cost of service determination, accounting method, design of rate schedule, terms and conditions of service, or the application of any rules or interpretation of law that may underlie, or may be thought to underlie, this Stipulation. It is further agreed that in any further negotiation or proceeding, other than any proceeding involving the honoring, enforcement or construction of this Stipulation, the parties shall not be bound or prejudiced by this Stipulation.

Dated this 23 day of June, 1987.

PUBLIC UTILITY DIVISION  
OF THE CORPORATION  
COMMISSION OF OKLAHOMA

SOUTHWESTERN BELL TELEPHONE COMPANY

By: Jane P. Olson  
Jane P. Olson  
406 Jim Thorpe Building  
Oklahoma City, OK 73105  
405/521-2255

By: G. Michael Bauer  
G. Michael Bauer  
830 North Harvey, Room 310  
Oklahoma City, OK 73102  
405/236-6754

Attorney for Howard W.  
Motley, Jr., on behalf  
of the Public Utility  
Division Staff

Attorney for Southwestern  
Bell Telephone Company

24

**BEFORE THE CORPORATION COMMISSION  
OF THE STATE OF OKLAHOMA**

CAUSE NO. PUD 860000260

**FILED**  
JUN 10 1996

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

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**IN THE MATTER OF THE APPLICATION  
OF HOWARD W. MOTLEY, JR.  
FOR AN INQUIRY INTO THE EFFECT  
OF THE 1986 TAX REFORM ACT  
ON OKLAHOMA UTILITIES**

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**BRIEF IN RESPONSE TO COMMISSIONER ANYTHONY'S  
MAY 1, 1996 REQUEST FOR LEGAL BRIEFS**

---

**W. A. DREW EDMONDSON  
ATTORNEY GENERAL OF OKLAHOMA**

**RICK D. CHAMBERLAIN  
MICKEY S. MOON  
ASSISTANT ATTORNEYS GENERAL  
112 State Capital  
Oklahoma City, OK 73105-4894  
(405) 521-3921**

**JUNE 10, 1996**

18

**Question 4: If in response to Question 2, you support the proposition that a rehearing of the merits is required, may the Commission recognize and incorporate the evidence gathered and developed by the Commission Staff, the State Attorney General and other parties to Cause No. PUD 662 into the record of Cause No. PUD 260?**

- A. **The Evidentiary Record in Cause No. PUD 890000662 Could be Incorporated into the Record of a Rehearing of Cause No. PUD 860000260 if it were Determined to be Relevant Within the Meaning of the Statute.**

As previously noted, the Attorney General does not advocate reopening the merits of this cause. However, if the Commission should determine that a rehearing is appropriate, and if the Supreme Court authorizes a rehearing, the Commission may recognize and incorporate the evidence in the record of Cause No. 890000662 into the record of Cause No. 860000260 to the extent it is relevant.

The Commission Rules of Practice provide that the Oklahoma Evidence Code will be applied in all Commission hearings. OAC 165:5-13-3(e). The Evidence Code generally only allows the admission of "relevant evidence." Okla. Stat. tit. 12, § 2402 (1991). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Id.* § 2401.

Cause No. PUD 890000662 was based upon a test year ending December 31, 1989, (Order No. 367868, sched. A) whereas Cause No. PUD 860000260 was based upon a test year ending September 30, 1987. Report of Hearing Officer p. 3, Attachment "A" to Order No. 341630. It is difficult to conceive of evidence in Cause No. PUD

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,  
ROBERT HENRY, ATTORNEY  
GENERAL, and THE AMERICAN  
ASSOCIATION OF RETIRED  
PERSONS,

Appellants,

v.

SOUTHWESTERN BELL  
TELEPHONE COMPANY,

Appellees/Cross-Appellant

and

THE OKLAHOMA CORPORATION  
COMMISSION

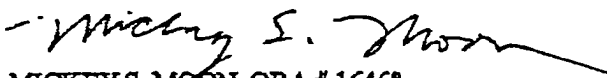
FILED  
SUPREME COURT  
STATE OF OKLAHOMA  
MAY 9 1997  
JAMES W. PATTERSON  
CLERK

No. 74,194

**RESPONSE OF THE OKLAHOMA ATTORNEY GENERAL  
TO THE SUGGESTION TO THE COURT FILED BY  
COMMISSIONER BOB ANTHONY**

Pursuant to the Court's Order of April 24, 1997, the Attorney General of the State of Oklahoma ("Attorney General"), by and through the undersigned Assistant Attorneys General, respectfully submits Attachment "A" in response to Commissioner Bob Anthony's "Suggestion to the Court" filed in Case No. 74,194 on March 27, 1997.

Respectfully submitted,



MICKEY S. MOON, OBA # 16468  
DARA DERRYBERRY PRENTICE, OBA # 16641  
ASSISTANT ATTORNEYS GENERAL  
112 State Capitol Building  
2300 North Lincoln Boulevard  
Oklahoma City, OK 73105-4894  
(405) 521-3921

BEFORE THE CORPORATION COMMISSION  
OF THE STATE OF OKLAHOMA

CAUSE NO. PUD 86000260

**FILED**  
JUN 10 1996

COURT CLERK'S OFFICE — OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

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IN THE MATTER OF THE APPLICATION  
OF HOWARD W. MOTLEY, JR.  
FOR AN INQUIRY INTO THE EFFECT  
OF THE 1986 TAX REFORM ACT  
ON OKLAHOMA UTILITIES

---

BRIEF IN RESPONSE TO COMMISSIONER ANYTHONY'S  
MAY 1, 1996 REQUEST FOR LEGAL BRIEFS

---

W. A. DREW EDMONDSON  
ATTORNEY GENERAL OF OKLAHOMA

RICK D. CHAMBERLAIN  
MICKEY S. MOON  
ASSISTANT ATTORNEYS GENERAL  
112 State Capitol  
Oklahoma City, OK 73105-4894  
(405) 521-3921

JUNE 10, 1996

21

**Question 4: If in response to Question 2, you support the proposition that a rehearing of the merits is required, may the Commission recognize and incorporate the evidence gathered and developed by the Commission Staff, the State Attorney General and other parties to Cause No. PUD 662 into the record of Cause No. PUD 260?**

- A. The Evidentiary Record in Cause No. PUD 890000662 Could be Incorporated into the Record of a Rehearing of Cause No. PUD 860000260 if it were Determined to be Relevant Within the Meaning of the Statute.**

As previously noted, the Attorney General does not advocate reopening the merits of this cause. However, if the Commission should determine that a rehearing is appropriate, and if the Supreme Court authorizes a rehearing, the Commission may recognize and incorporate the evidence in the record of Cause No. 890000662 into the record of Cause No. 860000260 to the extent it is relevant.

The Commission Rules of Practice provide that the Oklahoma Evidence Code will be applied in all Commission hearings. OAC 165:5-13-3(e). The Evidence Code generally only allows the admission of "relevant evidence." Okla. Stat. tit. 12, § 2402 (1991). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Id.* § 2401.

Cause No. PUD 890000662 was based upon a test year ending December 31, 1989, (Order No. 367868, sched. A) whereas Cause No. PUD 860000260 was based upon a test year ending September 30, 1987. Report of Hearing Officer p. 3, Attachment "A" to Order No. 341630. It is difficult to conceive of evidence in Cause No. PUD

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

7/20/89  
Howard W.

IN THE MATTER OF THE APPLICATION OF ) CAUSE NO. PUD 000260  
HOWARD W. MOTLEY, JR., FOR AN INQUIRY )  
INTO THE EFFECT OF THE 1986 TAX REFORM )  
ACT ON OKLAHOMA UTILITIES. ) ORDER NO. 341630

HEARINGS: November 10, 1986 (Technical Conference)  
January 23, 1989 (Prehearing Conference)  
January 26, 27, 30, and February 3, 1989  
(Hearings on the merits before Shelton L.  
Benedict, Hearing Officer)  
July 20, 1989 (Appeals to the Hearing Officer's Report)  
before the Commission en banc.

APPEARANCES: Maribeth D. Snapp, Deputy General Counsel, and Jane P.  
Olson, Senior Assistant General Counsel, on behalf of the  
Commission Staff  
Glen A. Glass, George Makobin, G. Michael Bauer, and  
William Anderson, Attorneys on behalf of Southwestern Bell  
Telephone Company  
Ronald E. Stokem and C. K. Casteel, Jr. Attorneys on  
behalf of MCI Telecommunications Corporation  
Eric R. King and Connie Mangle, Attorneys on behalf of the  
American Association of Retired Persons  
Ann Damin, Attorney on behalf of INOCG  
Den Brummitt and Elizabeth Kerr, Attorneys on behalf of  
the City of Oklahoma City  
Robert A. Butkin, Assistant Attorney General, on behalf of  
the Oklahoma Attorney General's Office  
Robert D. Allen and W. Richard Morris, Attorneys on behalf  
of AT&T Communications of the Southwest, Inc.  
Ron Comingsdeer, Attorney on behalf of the Oklahoma Rural  
Telephone Coalition  
Jack C. Lorenz, Attorney on behalf of Southwestern Bell  
Yellow Pages

ORDER REGARDING RATES OF SOUTHWESTERN BELL TELEPHONE COMPANY

BY THE COMMISSION:

The Oklahoma Corporation Commission being regularly in session and the undersigned Commissioners being present and participating, this Cause comes on for consideration and action upon the Application of Howard W. Motley, Jr., Director, Public Utility Division, for an inquiry into the effect of the Tax Reform Act of 1986 on Oklahoma utilities, and in this instance, specifically, Southwestern Bell Telephone Company ("SBC").

INTRODUCTION AND PROCEDURAL HISTORY

On October 23, 1986, Howard W. Motley, Jr., Director of the Public Utility Division, filed an application for an inquiry into the effects of the newly-enacted Tax Reform Act of 1986 ("TRA") on Oklahoma utilities. The TRA revised the corporate federal income tax rate from 46 percent to 34 percent, effective July 1, 1987. However, for calendar year 1987, a "blended" rate of 40 percent was prescribed, with a 34 percent rate to be used in 1988 and thereafter.

Twelve companies were named as respondents, including SBC. A Technical Conference between the respondents and Commission Staff was conducted on November 10, 1986. The purpose of the Technical Conference was to establish the scope of the information required to determine the effect of the TRA, as well as to establish the time for providing such information for quantification by the Staff.



other known and measurable changes. SWET presented its own calculations, using a 13.5 percent return on equity for illustrative purposes. Each specific point of disagreement between Staff's calculations and SWET's calculations have been discussed above. For the reasons stated above, as to each issue, the Commission finds that Staff's calculations are appropriate.

Staff's calculations were corrected in Late-filed Exhibit No. 119. That exhibit took into account the flow-through of pre-1977 deferred income taxes, for the reasons explained in the Report of the Hearing Officer (page 28, Paragraph E), and included an adjustment for interest capitalized during construction, as explained at page 2 of Shirley Norman's testimony in Exhibit 119. It also took into account adjusted depreciation expense for the 1987 test year and pooling adjustments, as explained in the Report (page 28, Paragraph F). The Commission adopts Staff's calculations as corrected and set forth in Exhibit 119.

Although the test year used ended September 30, 1987, the Staff annualized its figures, and calculated revenue requirements and converted them to a calendar year. Staff took into account the calendar year from January 1, 1987, calendar year 1988, and a prospective period through December 31, 1989. Any finding regarding revenue requirement would necessarily be from January 1, 1987 up to the date of this order. Since a revenue excess was found, a rate reduction is necessary after the date of this order, based on the calculated revenue requirement for the prospective period.

The Commission finds, based on Staff's calculations, that SWET had a revenue excess for each of the three periods delineated above, as follows:

1987 -	\$9,548,112	(Exhibit 119, Part II A, Section B, Schedule R/D-1)
1988 -	\$12,045,989	(Exhibit 119, Part III A, Section B, Schedule R/D-1)
Prospective -	\$7,847,172	(Exhibit 119, Part IV A, Section B, Schedule R/D-1)

The prospective figure assumes a full year, i.e. the issuance of this Commission's order on December 31, 1989 and the collection of previously tariffed rates by SWET until that time. That amount shall be prorated to September 30, 1989.

SWET is ordered to implement new reduced rates (as set forth below under Rate Design). The new reduced rates are based on the financial statements for the prospective period shown in Part IV A, Section B, Schedule R/D-1 of Exhibit 119.

#### I. Interest

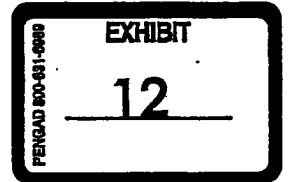
Legal briefs on interest were submitted as noted in the Introduction and Procedural History. The Commission, having fully considered the arguments of the parties, finds that imposition of interest on the revenue excess is fair to the ratepayers of Oklahoma and appropriate in view of the Stipulation that was agreed to by SWET. The Staff pointed out in its brief that this Commission has previously imposed an interest rate in Order No. 293717, issued in Cause No. FUD No. 000254, as well as in Order No. 334156, issued in Cause No. 29688. In both cases, the rationale was that the amounts were large enough that they could be invested in Treasury bills. The Attorney General has stated that the Commission's authority is broad enough to allow interest to be imposed at any rate which it deems appropriate.

The Commission finds interest should be imposed on SWET's revenue excess, and that an appropriate annual rate of interest is the one-year Treasury Bill rates since July 1, 1987 to September 30, 1989. We further find that interest should be compounded annually. The result of this methodology is an effective rate of 8.211%. After September 30,



U.S. Department of Justice

Federal Bureau of Investigation



In Reply, Please Refer to  
File No. 190-OC-64868

P.O. Box 568801  
Oklahoma City, OK 73156  
May 8, 2003

[REDACTED]  
Oklahoma City, Oklahoma [REDACTED]

Dear [REDACTED]

This is in response to your Freedom of Information - Privacy Acts (FOIPA) request received in our office by facsimile on April 21, 2003 with an original request received on April 22, 2003. This request pertains to a transcript of a conversation on August 3, 1989 between [REDACTED] and William Anderson (deceased) identified as 194A-463-1B40.

Enclosed are copies of a document from our files which was located pursuant to a search of our automated indices to the Central Records System as maintained in the Oklahoma City Office. Excisions have been made from these pages in order to protect information exempt from disclosure pursuant to the following subsections of Title 5, United States Code, Section 552 and/or 552a:

(j)(2); (b)(7)(C)

See form OPCA-16a, enclosed, for an explanation of these exemptions.

Pursuant to your request, 53 pages were reviewed and [REDACTED] [REDACTED] Notations have been made in the margins of the enclosed pages indicating specific exemptions applied to excised portions of the material.

OC 194A-463 (1B40)

WA: I, I wouldn't want to work for, I figured any lawyer that's got over ten to fifteen percent of his business with one damn client is (U).

[REDACTED] Yeah.

WA: Uh.

[REDACTED] Well I saw your name on that two sixty case, and course you we're in there, in the, in the courtroom, that was a lot uh, a lot of activity.

WA: After, yeah, after it's all over, I'll tell you why I did not participate anymore 'n, I did out here.

[REDACTED] Okay.

WA: I'll tell you off the record why I did not.

[REDACTED] Why is that?

WA: The test year doesn't touch the top side involved in any of the issues.

[REDACTED] Huh.

b7c WA: But [REDACTED] thought it was. But course the issue in that thing is what happened from July the 1st, 1987 forward. And they should've taken test years from July 1st, of eighty-seven to June 30th, eighty-eight but instead of that they took a test year ending September 30th, eighty-seven and tried to guess the rest of it. Yeah, but that's what they should of taken is the year when the tax went into effect.

[REDACTED] Well was that uh data uh after July 1 of eighty-seven available?

WA: It was available up in eighty-eight.

[REDACTED] Well so ma...years have passed now, you'd have think uh...(U) (talks at same time)

WA: ...Well hell they'd could have, they could have had it done and had it done with.

[REDACTED] Yeah...

OC 194A-463 (1B40)

WA: Well hell you were just guessing on the thing and right now we're two years after that, that's why I just told Bell, I'll sit in there with you but your picking the wrong year. Well said, we didn't want to make [redacted] mad objecting so. b7c

[redacted] Uh-huh.

WA: Well that, but, no, you all got the record you got...

[redacted] ...wh...wh

WA: ...best ya' can, but you got a lot of supposition and conjectures in the damn thing.

[redacted] When you say [redacted]

WA: [redacted] b7c

[redacted] Oh yeah. She's uh...

WA: Now [redacted] b7c to pick, September 30, '87 as a test year, you had three years, three months of the new tax rate and nine months of the old tax rate.

[redacted] Yeah.

WA: And, of course I figured that...

[redacted] I, I've been reading that stuff night and day...

WA: I figured uh...

[redacted] ...Uh, they had the three, three years now and they got a blended tax rate...

WA: Yeah, yeah...

[redacted] ...and they had to do so many months...

WA: ...I figure the simplest thing would have been, take July the 1st of eighty-seven uh to June 30th eighty-eight was the agreement to put it under bond from that point forward...

[redacted] Yeah.

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BEFORE THE CORPORATION COMMISSION OF THE  
STATE OF OKLAHOMA

ORIGINAL

IN THE MATTER OF THE )  
APPLICATION OF HOWARD W. )  
MOTLEY, JR., FOR AN INQUIRY )  
INTO THE RATES AND CHARGES OF )  
SOUTHWESTERN BELL TELEPHONE )  
COMPANY. )

No. PUD 890000662

DEPOSITION OF GLEN A. GLASS, ESQ.,  
taken on behalf of the applicant, pursuant to  
agreement of the parties on Friday, May 21, 1993, at  
the law offices of Crowe & Dunlevy, 1800 Mid-America  
Tower, Oklahoma City, Oklahoma, before me,  
Maynard E. Peterson, Certified Shorthand Reporter  
within and for the State of Oklahoma.

A p p e a r a n c e s :

For the Applicant:

DAVID W. LEE, Esquire  
Lee & Fields, P.C.  
818 N.W. 63rd Street, Suite 100  
Oklahoma City, OK 73116-7699

For the Respondent and Deponent:

ANDREW M. COATS, Esquire  
RICHARD C. FORD, Esquire  
Crowe & Dunlevy  
1800 Mid-America Tower  
20 N. Broadway  
Oklahoma City, OK 73102

and

MELANIE S. FANNIN, Esquire  
ROGER K. TOPPINS, Esquire  
800 North Harvey, Room 310  
Oklahoma City, OK 73102

and

LIAM COONAN, Esquire  
Southwestern Bell Corporation  
San Antonio, Texas

1 he wanted to on behalf of Southwestern Bell  
2 Telephone Company?

3 A. No.

4 Q. Okay. So there were certain restrictions  
5 on what he was allowed to do during that time?

6 A. Yes.

7 Q. Okay.

8 A. Which was true for all outside counsel.

9 Q. All right. And I am trying to understand  
10 where those limitations or restrictions came from.

11 A. Well, Mr. Anderson wasn't engaged to do any  
12 workers' compensation defense work for us, so he  
13 didn't do any, for example. And there's a thousand  
14 of those things he didn't do. He provided legal  
15 advice and assistance with respect to regulatory  
16 matters at the commission.

17 With respect to Anderson & Waddell, the  
18 firm, it included utilization of both Mr. Anderson  
19 and Mr. Waddell. That did not generally include any  
20 actual hearing work or entries of appearance  
21 formally in commission cases, however.

22 Q. Did it involve discussions with  
23 commissioners or staff members?

24 A. It could.

25 Q. Okay. And did you instruct Mr. Anderson

1 whom to talk with?

2 A. Sometimes.

3 Q. Okay. Those times when you did instruct  
4 him to talk with a commissioner or staff members,  
5 did you instruct him what to talk about?

6 A. General subject matter, yes.

7 Q. Okay. And then do you recall any  
8 instances, specific instances, in which you  
9 instructed Mr. Anderson to talk with a commissioner  
10 or a staff member?

11 A. Yes.

12 Q. Okay. Could you tell me what those  
13 instances you recall?

14 A. Oh, for example, when we were preparing  
15 accounting testimony, I might have Mr. Anderson sit  
16 down with some of the staff accountants and go over  
17 exhibits that the -- or documents being produced by  
18 the company to help clarify rate base or accounting  
19 issues, things of that nature.

20 Q. Is Mr. Anderson an accountant?

21 A. You mean is he a Certified Public  
22 Accountant?

23 Q. Does he have an accounting degree, that you  
24 know of?

25 A. Not that I am aware of. But he knows a lot

1 more about regulatory accounting than most people  
2 with accounting degrees, I am absolutely satisfied  
3 of that.

4 Q. So you had him discuss accounting matters  
5 with commission staff. What about conversations  
6 with commissioners? Do you recall any of those  
7 specific ones that you directed him to have?

8 A. No.

9 Q. After he would have these conversations at  
10 your instruction, would he report back to you?

11 A. Generally, he would, yes, yes.

12 Q. Okay. And would he call you on the phone,  
13 write you a letter? How did he do that, typically?

14 A. Typically, he would call me or I'd see him  
15 and he will tell me.

16 Q. Do you know whether or not there was an  
17 engagement letter or written contractual arrangement  
18 between Mr. Anderson and Southwestern Bell Telephone  
19 Company?

20 A. Yes, there was.

21 Q. Okay. And do you know the terms of that --  
22 First of all, was it an engagement letter; was it a  
23 written contract? What was it?

24 A. Well, I think historically over the years  
25 there have been engagement letters. I mean that's



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Glen A. Glass

GLEN A. GLASS, ESQ.

STATE OF OKLAHOMA )

) ss.

COUNTY OF OKLAHOMA )

Subscribed and sworn to before me this  
6<sup>th</sup> day of June, 1993.

Helen L. Scott

Notary Public, State of Oklahoma

My commission expires 8-28-96.

C E R T I F I C A T E

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STATE OF OKLAHOMA )  
 ) ss.  
COUNTY OF OKLAHOMA )

I, Maynard E. Peterson, a Certified Shorthand Reporter within and for the State of Oklahoma, do certify that the witness in the foregoing deposition, GLEN A. GLASS, ESQ., was duly sworn to testify the truth, the whole truth and nothing but the truth, in the within-entitled cause; that said deposition was taken at the time and place herein named; that the deposition is a true record of the witness's testimony as reported by me and thereafter transcribed into typewriting by computer.

I do further certify that I am not counsel, attorney or relative of either party, or clerk or stenographer of either party, or otherwise interested in the event of this suit.

I do further certify that I am a duly qualified and acting Certified Shorthand Reporter within and for the State of Oklahoma, Certificate No. 00325.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my CSR stamp at my office in Oklahoma City, Oklahoma, this 28th day of May, 1993.

*Maynard E. Peterson*  
*by Dorothy Peterson*  
Oklahoma Certified Shorthand Reporter

COSTS: \$ \_\_\_\_\_  
Paid by Applicant

Maynard E. Peterson  
Oklahoma Certified Shorthand Reporter  
Certificate Number 00325  
Exp. Date: December 31, 1994

WITNESS ERRATA SHEET

GLEN A. GLASS, ESQ.

Application of Howard W. Motley, Jr.-SWB

PUD No. 890000662

Pg. : Line : Changed From : Changed to : Reason

Pg.	Line	Changed From	Changed to	Reason
82	15	"I recall"	"I don't recall"	Incorrect Transcription

24	June 8, 1993	<u>Glen A. Glass</u>
25	Date	Signature of witness

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

Sup. Ct. Case No. 112,973

JUL 14 2014

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA  
MICHAEL J. MOORE  
CLERK

HONORABLE SODY CLEMENTS, an Individual and Oklahoma Resident on behalf of herself and all others similarly situated; LT. GENERAL (Ret.) RICHARD A. BURPEE, an Individual and Oklahoma Resident on behalf of himself and all others similarly situated,  
Petitioners,

vs.

AT&T, INC., f/k/a SBC COMMUNICATIONS INC., f/k/a SOUTHWESTERN BELL CORPORATION, f/k/a SOUTHWESTERN BELL TELEPHONE COMPANY, a foreign corporation; SWBT, Inc., a foreign corporation d/b/a SOUTHWESTERN BELL TELEPHONE COMPANY, [itself d/b/a AT&T ARKANSAS, AT&T KANSAS, AT&T MISSOURI, AT&T OKLAHOMA, AT&T TEXAS, collectively d/b/a AT&T SOUTHWEST], f/k/a SOUTHWESTERN BELL TELEPHONE COMPANY, LP, a foreign Limited Partnership, f/k/a SOUTHWESTERN BELL TEXAS, INC, a foreign corporation, f/k/a SOUTHWESTERN BELL TELEPHONE COMPANY, a foreign corporation; STATE OF OKLAHOMA, ex rel. OKLAHOMA CORPORATION COMMISSION; ROBERT ANTHONY, in his Official Capacity as CHAIRMAN of the OKLAHOMA CORPORATION COMMISSION; PATRICE DOUGLAS, in her Official Capacity as VICE CHAIRMAN of the OKLAHOMA CORPORATION COMMISSION; DANA MURPHY, in her Official Capacity as COMMISSIONER of the OKLAHOMA CORPORATION COMMISSION; MCI TELECOMMUNICATIONS CORPORATION; AMERICAN ASSOCIATION OF RETIRED PERSONS; INCOG (INDIAN NATION COUNCIL OF GOVERNMENTS); CITY OF OKLAHOMA CITY; AT&T COMMUNICATIONS OF THE SOUTHWEST, INC; OKLAHOMA RURAL TELEPHONE COALITION; SOUTHWESTERN BELL YELLOW PAGES, INC.,  
Respondents.

**RESPONSE OF THE AT&T ENTITIES IN OPPOSITION TO  
PETITIONERS' APPLICATION TO ASSUME ORIGINAL JURISDICTION,  
BILL OF REVIEW, AND PETITION FOR WRIT OF MANDAMUS**

ROBERT C. WALTERS  
(*pro hac vice* admission pending)  
JAMES C. HO (*pro hac vice* admission pending)  
GIBSON DUNN & CRUTCHER LLP  
2100 McKinney Avenue, Suite 1100  
Dallas, Texas 75201  
(214) 698-3100; (214) 571-2900 (Facsimile)  
rwalters@gibsondunn.com  
jho@gibsondunn.com

CLYDE A. MUCHMORE, OBA #6482  
RICHARD C. FORD, OBA #3028  
CROWE & DUNLEVY  
A Professional Corporation  
20 N. Broadway Ave., Suite 1800  
Oklahoma City, Oklahoma 73102  
(405) 235-7700  
(405) 239-6651 (Facsimile)  
clyde.muchmore@crowedunlevy.com  
richard.ford@crowedunlevy.com

July 14, 2014

**ATTORNEYS FOR RESPONDENTS AT&T INC., SWBT, INC.,  
AND AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.**

ple,” and “providing the highest quality service available.” *Id.* The Attorney General and AARP appealed the Commission’s decision to this Court.

On December 24, 1991, the Court affirmed the relevant portions of the order. Importantly, the Court concluded that Oklahoma law “affords *no* authority for requiring the refund sought by the AARP and the State.” *Herry*, 1991 OK 134, ¶ 11, 825 P.2d at 1311 (emphasis in original).

## II. Commissioner Hopkins’s Improper Conduct Is Discovered.

In 1992, Commissioner Anthony announced that “for four years he had been acting secretly as an investigator and informant in an ongoing FBI investigation concerning the conduct of his fellow commissioners and employees and representatives of [SWBT].” *Sw. Bell Tel. Co. v. Okla. Corp. Comm’n*, 1994 OK 38, ¶ 2, 873 P.2d 1001, 1003. The investigation uncovered that a private outside attorney retained by SWBT, Bill Anderson, had bribed Commissioner Hopkins to vote for the 1989 order. *See App. 1.* Both were indicted and convicted. Hopkins received a prison term of 33 months followed by three years of supervised release, and was ordered to pay a fine of \$71,234. *See United States v. Hopkins*, Judgment No. CR-93-137-A (W.D. Okla. 1995). His conviction was affirmed on appeal in 1996. *See United States v. Hopkins*, 77 F.3d 493 (10th Cir. 1996). Anderson received 33 months in prison followed by three years of supervised release, and was ordered to pay a fine of \$7,500. *See United States v. Anderson*, Judgment No. CR-93-137-A (W.D. Okla. 1995). No employee of SWBT was charged with, much less convicted of, any crime.

**D. The Information Presented By Petitioners Would Not Change The Result.**

Finally, a bill of review may be granted only if the new facts "materially affect the decree and probably induce a different result." *Scotten v. Littlefield*, 235 U.S. 407, 411 (1914). It should be denied, however, if the new facts "would not have justified a decree in [the petitioner's] favor." *Purcell*, 71 U.S. at 521. This, too, is fatal to Petitioners. There is broad consensus that the 1989 order best served Oklahomans and should be left intact. The Commission has twice declined to reopen the 1989 order based on the same reasons argued here. Similarly, this Court has already concluded that the 1989 order was supported by substantial evidence. See *Henry*, 1991 OK 134, ¶ 14, 825 P.2d at 1312 ("The Commission's decision in this regard was . . . one of 'policy,' and this court is not free to disturb that ruling if it is supported by 'substantial evidence.'"). That decision was proposed by the Staff, approved by the Hearing Officer, supported by the public, affirmed by the Commission, and declared to be "inherently beneficial" by this Court. *Id.* (¶ 15).

**CONCLUSION**

Oklahomans have an interest in both honesty and finality. The people who committed bribery have been punished. And relevant Oklahoma authorities have confirmed, and reconfirmed, that the 1989 order best served Oklahoma customers and should be left intact.

It is time (indeed, long past time) for finality. In Petitioners' world, however, there is never finality. Anyone at any time can subject any rate order to collateral attack on the same grounds, again and again, year after year. And neither the Commission nor any of its stakeholders can count on a rate order achieving finality. That is not, and cannot be, the law. Oklahoma law demands that the Court bring this matter to a close, once and for all.

EXHIBIT

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED  
SUPREME COURT  
STATE OF OKLAHOMA  
OCT - 5 1993  
JAMES W. PATTERSON  
CLERK

SOUTHWESTERN BELL TELEPHONE  
COMPANY,

Appellant,

v.

OKLAHOMA CORPORATION COMMISSION  
and STATE OF OKLAHOMA,

Appellees.

No. 80,333 (Cons.  
w/Nos. 80,334, 80,340  
80,342 and 80,345)

SOUTHWESTERN BELL TELEPHONE  
COMPANY,

Petitioner,

v.

OKLAHOMA CORPORATION COMMISSION,

Respondent.

No. 81,735

SUSAN B. LOVING, ATTORNEY  
GENERAL,

Petitioner,

v.

OKLAHOMA CORPORATION  
COMMISSION,

Respondent.

No. 81,783

REPORT OF SPECIAL MASTER

This matter came on for hearing pursuant to a referral Order of the Oklahoma Supreme Court dated June 28, 1993, directing the special master to conduct a hearing and to submit findings of fact and conclusions of law as to the following questions:

1. Was Commissioner Anthony an FBI informant during the

period of time Commission Cause No. PUD-662 was pending before the Corporation Commission, including both the evidentiary and deliberative phase?

2. When did Southwestern Bell Telephone Company know, or should have known, of his involvement as an informant?

3. What was the earliest date of that actual or imputed knowledge?

The special master was not directed to consider any evidence of wrongdoing on the part of SWBT. The evidentiary hearing was held on September 3, 1993. Based on the evidence introduced at that hearing, the special master makes this report.

#### FINDINGS OF FACT

1. The parties stipulated that Commissioner Anthony did serve as an informant for the Federal Bureau of Investigation (FBI) from December, 1988, to at least October 2, 1992, in connection with an investigation of suspected wrongdoing at the Corporation Commission.

2. Commissioner Anthony was actively assisting the FBI during the entire time that PUD-662 was pending before the Commission.

3. Commissioner Anthony's activities in connection with the FBI investigation included contacts with representatives of Southwestern Bell Telephone Company (SWBT), among others. In this connection evidence was received at the evidentiary hearing that Commissioner Anthony made recordings of his conversations and



meetings with SWBT agents and employees. Such evidence was that Commissioner Anthony had received illegal cash contributions (which he immediately gave to the FBI) from William Anderson, attorney for SWBT in PUD-260 and PUD-662 pending before the Commission during the period in question and from David Miller, SWBT's Vice President in Oklahoma for Governmental and Regulation Affairs and also a registered lobbyist for SWBT. The further evidence in this regard was that the cash was accompanied by false lists of contributors. This was given for the asserted purpose of having "access" to him, which was no more or no less than an effort to have him look with favor on their pending rate matters.

4. There was no evidence that SWBT or any of its agents or employees learned of Commissioner Anthony's role as an informant until he publicly announced his cooperation with the FBI on October 2, 1992. On the issue of whether SWBT should have known that Commissioner Anthony was cooperating with the FBI, there was ample evidence submitted in the evidentiary hearing concerning Mr. Anthony's efforts to maintain the secrecy of his role as an informant, such evidence being sufficient to outweigh any assertions that SWBT should have, in the exercise of reasonable diligence, discovered Anthony's role with the FBI prior to his public announcement on October 2, 1992.

5. Even if it should be determined that SWBT should have had some suspicions that Commissioner Anthony was cooperating with the FBI, a diligent attempt by SWBT to confirm such suspicions would

have revealed nothing since, again, Mr. Anthony was certainly trying to keep that relationship a secret. Moreover, the FBI, under its established policies, would not have revealed anything about his cooperating with them.

6. Due to the very limited scope of the special master's inquiry mandated by the Supreme Court, it should be noted that SWBT did not offer any evidence, if they had such evidence, to rebut the testimony of Commissioner Bob Anthony relating to illegal contributions to him by William Anderson and David Miller.

7. When Mr. Anthony voted in PUD-662 by Order 367868 to reduce SWBT's rates by \$93.7 million dollars annually and order SWBT to refund \$184.4 million dollars to its customers, SWBT brought this lawsuit asking for a new trial on the grounds that it did not know that Mr. Anthony was acting as an FBI informant. SWBT contends that Anthony's actions denied them "due process" as he was biased and consequently they did not receive a fair hearing, and if they had known of such activities on his part they would have sought to disqualify him from participating in their case.

#### CONCLUSIONS OF LAW

1. Based on the facts set out above, the issues submitted for resolution by the special master are answered as follows:

1. Was Commissioner Anthony an FBI informant during the period of time Commission Cause No. PUD-662 was pending before the Corporation Commission, including both

the evidentiary and deliberative phase? Answer: Yes.

2. When did Southwestern Bell Telephone Company know, or should have known, of his involvement as an informant? Answer: October 2, 1992.

3. What was the earliest date of that actual or imputed knowledge? Answer: October 2, 1992.

2. From the greater weight of the evidence heard by the special master as set out above, it is concluded that SWBT knew that Commissioner Anthony has ostensibly accepted what he believed to be illegal cash contributions from their employees which would certainly have been grounds for SWBT to move for his disqualification prior to any hearings and prior to his decision in those hearings. Obviously SWBT believed it to be in its best interests not to seek his disqualification.

3. Once Commissioner Anthony had voted against SWBT's interests and publicly announced his four (4) years of full cooperation with the FBI's investigation of the Commission, SWBT seeks in this case to receive a new trial. This raises many issues and questions. One question is whether a party to an action can require that the trier of the facts be disqualified because of such party's own wrongdoing. If there had been no illegal cash contributions or wrongdoing on the part of SWBT, then certainly SWBT would not have any reasonable grounds for believing Commissioner Anthony would be biased against it.

4. If the only issue the Oklahoma Supreme Court wants to

consider, is whether Commissioner Anthony was assisting the FBI in an investigation of the Commission and this was not known or could not have been known by SWBT, then it is respectfully submitted that a new trial before the Commission should be granted. It is further recommended by the special master that such new trial should not be de novo unless the Supreme Court is of the opinion that Commissioner Anthony's alleged or presumed bias did in some way affect the evidentiary hearing conducted by Administrative Law Judge Goldfield or his decision.

5. On the other hand, if the Supreme Court determines that the other questions raised in the evidentiary hearing before the special master should be resolved before this appeal can be decided, then it is suggested that another evidentiary hearing will be necessary to determine these issues:

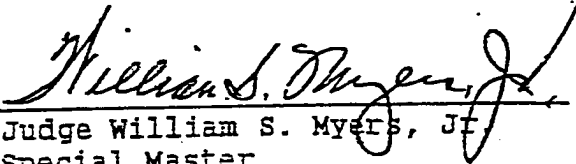
1. Where a party has knowledge which is grounds for the disqualification of a Commissioner but does not ask for disqualification until after an adverse ruling has been made, can such party then seek the disqualification of the Commissioner on another ground?

2. As a matter of law, is a judge, or a Commissioner, automatically disqualified from hearing a case based on the misconduct of the party seeking to disqualify him?

It is suggested that an additional evidentiary hearing would be necessary so as to afford SWBT an opportunity to rebut

Commissioner Anthony's testimony and to have the law fully briefed  
on these issues.

Respectfully submitted this 5<sup>th</sup> day of October, 1993.

  
\_\_\_\_\_  
Judge William S. Myers, Jr.  
Special Master

No. 80,333  
(Cons with 80,340, 80,344  
80,342 and 80,345)

RECEIVED  
SUPREME COURT  
STATE OF OKLAHOMA  
OCT 13 1993  
JAMES W. F. [unclear]

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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SUSAN B. LOVING, ATTORNEY GENERAL,

Appellant,

v.

OKLAHOMA CORPORATION COMMISSION AND  
SOUTHWESTERN BELL TELEPHONE COMPANY

Appellee.

---

ATTORNEY GENERAL'S MOTION AND SUPPORTING BRIEF TO DENY  
SOUTHWESTERN BELL'S BIAS-BASED CHALLENGE TO CORPORATION  
COMMISSION ORDER NO. 367868, OR IN THE ALTERNATIVE,  
FOR AN EVIDENTIARY HEARING

---

SUSAN B. LOVING  
ATTORNEY GENERAL OF OKLAHOMA

ROBERT BUTKIN, OBA #10042  
ASSISTANT ATTORNEY GENERAL

112 State Capitol Building  
Oklahoma City, OK 73105  
(405) 521-3921

ATTORNEYS FOR APPELLANT

October 13, 1993

EXHIBIT  
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Thorpe Building. Anthony reminded them that he did not move into that office until after he was sworn in. (Tr. 59).

3. The Statements and Knowledge Of SWBT Attorneys and Officials Are Imputed To The Corporation.

In the evidentiary hearing before Judge Myers, Liam Coonan, an attorney for SWBT, testified directly about his involvement as counsel representing SWBT in respect to the FBI investigation of illegal campaign contributions. Coonan's statements are admissible against the party he represents. See, 12 O.S. § 2801(4)(b)(4).

At the hearing, Commissioner Anthony also testified concerning statements made to him by Miller, Coonan, Ellis and Glass, all SWBT officials at the time the relevant statements were made. These statements were also admissible since they were offered against a party, and were made by the party's agent or servant concerning a matter within the scope of the agency or employment, and made during the existence of the employment or agency relationship. 12 O.S. 1991, § 2801(4)(b)(4).

Because Coonan, Ellis, Miller and Glass acted as agents for SWBT, their knowledge of wrongdoing is also imputed to the corporation. See, e.g., Franklin Bond Corporation v. Smith, 20 P.2d 912, 914 (Okl. 1933); Estate of Braz v. First Bank and Trust Co. of Sand Springs, 821 P.2d 387, 391 (Okl. Ct. App. 1991); Bailey v. Gulf Insurance Co., 389 F.2d 889, 891 (10th Cir. 1968).

IV. IN THE ALTERNATIVE, THE ATTORNEY GENERAL REQUESTS THAT THIS COURT INSTRUCT THE SPECIAL MASTER TO CONDUCT AN EVIDENTIARY HEARING TO DETERMINE THE ISSUES RAISED IN THE SPECIAL MASTER'S REPORT.

The Attorney General believes that Judge Myers' findings 1) that SWBT had reason to seek Commissioner Anthony's disqualification before the conclusion of the proceedings below; and 2) but for SWBT's own illegal conduct, SWBT would never have had any basis for belief that Anthony would be biased against it, are fatal to Bell's post-hearing bias-based challenge.

In the alternative, the Attorney General requests that this Court conduct an evidentiary hearing, as suggested by the Special Master, to determine the issues which Judge Myers identified as follows:

1. Where a party has knowledge which is grounds for the disqualification of a Commissioner but does not ask for disqualification until after an adverse ruling has been made, can such party then seek the disqualification of the Commissioner on another ground?

2. As a matter of law, is a judge, or a Commissioner, automatically disqualified from hearing a case based on the misconduct of the party seeking to disqualify him?

Respectfully submitted,

SUSAN BRIMER LOVING  
ATTORNEY GENERAL OF OKLAHOMA



ROBERT BUTKIN, OBA #10042  
ASSISTANT ATTORNEY GENERAL



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

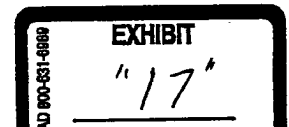
SOUTHWESTERN BELL TELEPHONE COMPANY,	)	
	)	
Appellant,	)	
	)	
v.	)	No. 80,333
	)	(Cons. with 80,334,
OKLAHOMA CORPORATION COMMISSION	)	80,340, 80,342
AND STATE OF OKLAHOMA,	)	80,345)
	)	
Appellees.	)	

ATTORNEY GENERAL'S  
MOTION TO REOPEN THE RECORD  
FOR THE ADMISSION OF ADDITIONAL EVIDENCE

The Attorney General of the State of Oklahoma, Susan B. Loving, respectfully requests the Special Master to reopen the record in this case for the limited purpose of allowing the admission of certain evidence which is relevant to this proceeding but which was heretofore unavailable to the parties.

I. PREVIOUSLY UNAVAILABLE EVIDENCE CONCLUSIVELY SHOWS THAT SWBT'S REPRESENTATIVES KNOWINGLY SOUGHT TO INFLUENCE ANTHONY THROUGH ILLEGAL CASH PAYMENTS, THAT ANTHONY ADVISED SWBT'S PRESIDENT OF THE ILLEGAL ACTIVITIES, BUT THAT SWBT'S PRESIDENT SOUGHT TO CONCEAL THE MATTER RATHER THAN REPORT IT TO LAW ENFORCEMENT AUTHORITIES OR REQUEST ANTHONY'S RECUSAL.

In its post-hearing brief, Southwestern Bell Telephone Company ("SWBT") denies any claims of criminal wrongdoing by its representatives and labels as "outrageous" any suggestion that SWBT's representatives attempted to cover-up any such wrongdoing. (SWBT Brief, pp. 2 & 5). And yet previously unavailable information provides dramatic evidence that SWBT's representatives not only knowingly engaged in illegal actions intended to influence Commissioner Bob Anthony, but when Anthony reported those illegal



UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

**FILED**  
United States Court of Appeals  
Tenth Circuit

FEB 14 1996

**PATRICK FISHER**  
Clerk

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,

v.

ROBERT (BOB) H. HOPKINS,  
Defendant-Appellant.

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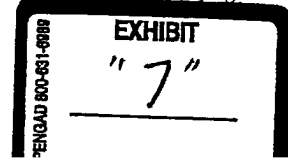
No. 95-6120  
(D.C. No. CR-93-137-A)  
(W.D. Oklahoma)

ORDER AND JUDGMENT\*

Before PORFILIO, ANDERSON, and KELLY, Circuit Judges.

Robert E. "Bob" Hopkins appeals his conviction for accepting a bribe while serving as a commissioner on the Oklahoma Corporation Commission, claiming the district court erred in denying his motion for severance. The issue in this case is whether Mr. Hopkins is entitled to severance when the jury will hear prejudicial evidence admissible only against a codefendant. We conclude the district court did not abuse its discretion by denying severance and AFFIRM.

\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.



I.

Mr. Hopkins was indicted for accepting a bribe in violation of 18 U.S.C. § 666(a)(1) to influence his vote on a public utilities rebate case pending before the Oklahoma Corporation Commission. Mr. Hopkins was tried jointly with codefendant William Anderson, an attorney who represented Southwestern Bell in Corporation Commission matters. Mr. Anderson was charged with paying the bribe.

Prior to trial, Mr. Hopkins moved for severance, claiming he would be prejudiced in a joint trial because the government planned to present evidence in the form of tape recorded statements made by Anderson which implicated Mr. Hopkins. Because Mr. Anderson was not going to testify at trial, Mr. Hopkins argued his confrontation rights would be compromised. The court denied the motion, and the government presented the tape recorded evidence at trial without further objection. When the tapes were offered into evidence and again in the closing charge, the court instructed the jury the tapes were to be considered as evidence against a defendant only where that defendant is a participant in the taped conversation, and not otherwise.

The original indictment included a conspiracy charge in violation of 18 U.S.C. § 1512(b)(3), alleging Anderson and Mr. Hopkins conspired to prevent agents of the FBI from learning about the illegal payments. Ultimately, the conspiracy charge was

dismissed. At the close of trial, however, the district court made a finding that the evidence showed a common plan involving Mr. Hopkins, Mr. Anderson and others. Consequently, the court determined acts or statements of one member of the joint venture were admissible against the other parties to the venture.

Mr. Hopkins now appeals the district court's denial of his severance motion, claiming the joint trial compromised his confrontation rights and prevented the jury from making a reliable judgment about his guilt or innocence. Essentially, Mr. Hopkins contends the severance rule set forth in *Bruton v. United States*, 391 U.S. 123 (1968), should not be limited strictly to cases involving codefendant confessions. Rather, the procedural protection should be extended to all cases involving codefendant statements that implicate a defendant and are protected from cross-examination because of the privilege against self-incrimination. Mr. Hopkins also argues the evidence was not admissible as coconspirator statements under Fed. R. Evid. 801(d)(2)(E) because the taped statements were not made in the furtherance of the conspiracy. He contends they were simply narrative statements that "spilled the beans" after the fact and fell outside the scope of the conspiracy.

## II.

Where joinder of defendants is proper under Fed. R. Crim. P. 8(b), severance is permissible only upon a showing of prejudice under Fed. R. Crim. P. 14. The rule does not require severance even if prejudice is shown; rather, it leaves any decision to

grant severance to the sound discretion of the trial court. *Zafiro v. United States*, 506 U.S. 534, \_\_\_, 113 S. Ct. 933, 938 (1993). Thus, we review denials of severance motions for abuse of discretion. *United States v. Scott*, 37 F.3d 1564, 1579 (10th Cir. 1994), cert. denied, 115 S. Ct. 773 (1995). To establish abuse of discretion, more is required than a mere showing that separate trials might have given defendants a better chance for acquittal. *Id.*

Mr. Hopkins contends the trial court abused its discretion to grant severance and erroneously admitted Anderson's tape recorded statements because the statements implicated Mr. Hopkins and he had no opportunity to cross-examine Anderson at trial, citing *Bruton*, 391 U.S. at 126. *Bruton* held that a defendant is deprived of his rights under the Confrontation Clause when his non-testifying codefendant's incriminating confession is introduced at their joint trial, even when the jury is given clear, concise, and understandable instructions to consider that confession only against the codefendant: By its context, *Bruton* is limited to codefendant's confessions. Although Mr. Hopkins urges us to extend *Bruton* to all incriminating codefendant statements by asking us to apply its protection to the government's tape recorded evidence, we decline to do so.

This court has consistently limited the application of *Bruton* to codefendant confessions. *United States v. Hill*, 901 F.2d 880, 883 (10th Cir. 1990). Arguments in favor of extending the rule's application to codefendant statements of admission have been rejected. *United States v. Rogers*, 652 F.2d 972, 976 (10th Cir.

1981). The *Bruton* Court recognized that a jury must be relied upon to follow limiting instructions and can be expected to disregard information at the court's direction. However, the devastating impact of a codefendant's confession creates a situation "in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored." *Bruton*, 391 U.S. at 135.

Here, the jury was not faced with Mr. Anderson's sworn confession. Moreover, it was instructed to consider various tape recorded conversations between Mr. Anderson and another Corporation Commissioner as evidence against Mr. Anderson exclusively. Although Mr. Anderson's admissions implicated Mr. Hopkins, we find no reason to conclude the jury was incapable of following the court's clear and thorough directive.

Further, the jury was restrained from using only some of the tape recorded evidence against Mr. Hopkins. In several of the taped conversations, Mr. Hopkins was a participant, and the jury was properly instructed that those tapes were admissible against him. Also, the conversations recorded in 1991, which involve discussions between Anderson and others including Mr. Hopkins, are directly related to the conspiracy to obstruct the FBI investigation. Even when a conspiracy is not charged, or dropped as in the present case, statements made by codefendants in the furtherance of a conspiracy are admissible where the existence of a conspiracy is independently established. *United States v.*

Cotton, 646 F.2d 430, 433 (10th Cir.), cert. denied, 454 U.S. 861 (1981). Here, the district court determined the conspiracy was independently established. The 1991 tapes involving the FBI investigation were, therefore, admissible against Mr. Hopkins under Fed. R. Evid. 801(d)(2)(E).

### III.

Finally, the government argues that any prejudice suffered by Mr. Hopkins due to the erroneous admission of Anderson's taped conversations was harmless error. We agree. Even if error occurred in the admission of the Anderson tapes not covered by Fed. R. Evid. 801(d)(2)(E), the statements were not of constitutional dimensions and "the error is deemed harmless unless it had a substantial influence on the outcome or leaves one in grave doubt as to whether it had such effect." *United States v. Flanagan*, 34 F.3d 949, 955 (10th Cir. 1994).

The record contains substantial testimony by a witness, Mike Murphy, describing the payoff procedure and how Murphy shared cash payments with Mr. Hopkins. The 1991 tapes, properly admitted under Fed. R. Evid. 801(d)(2)(E), detailed efforts to conceal the payoffs from the FBI. From those tapes, the jury heard recorded conversations among Hopkins, Anderson, Murphy and other Southwestern Bell executives plotting their "story" in the event federal agents questioned them. In light of the substantial evidence presented at trial and the repeated limiting instructions

given by the trial judge, we are satisfied that any potential error was harmless.

AFFIRMED.

U.

Entered for the Court

John C. Porfilio  
Circuit Judge

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FEB 26 1996  
U.S. ATTY. WDJOK



BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION )  
OF HOWARD W. MOTLEY, JR., FOR AN )  
INQUIRY INTO THE EFFECT OF THE )  
1986 TAX REFORM ACT ON OKLAHOMA )  
UTILITIES )

CAUSE NO. PUD 860000260

**FILED**  
JUL 14 2014

IN THE MATTER OF THE APPLICATION )  
OF HOWARD W. MOTLEY, JR., FOR AN )  
INQUIRY INTO THE RATES AND )  
CHARGES OF SOUTHWESTERN BELL )  
TELEPHONE COMPANY. )  
)  
)

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

CAUSE NO. PUD 890000662

**AFFIDAVIT OF CORPORATION COMMISSIONER BOB ANTHONY**

I, Bob Anthony, of lawful age and being first duly sworn upon my oath say:

1. This Affidavit contains, in part, information not readily available to the public concerning potentially unlawful conduct of many senior corporate officers and attorneys of Southwestern Bell Telephone Company (SWBT) who were involved with Oklahoma Corporation Commission Causes PUD 260 and/or PUD 662. Many of the persons identified herein were never prosecuted.
2. I make this Affidavit as a part of my ongoing efforts to respond to certain Open Record Requests and to offer input as the Oklahoma Corporation Commission (OCC) seeks to update its Ethics Policy per unanimous vote on April 24, 2014. Reviewing previous conduct that may have been unlawful or unethical should help the OCC have a more relevant and effective Ethics Policy going forward. In addition, this Affidavit is part of my response to the June 26, 2014 order of the Oklahoma Supreme Court in Cause No. MA-112973, *Clements and Burpee v. AT&T, Inc., et al.*
3. I am an elected member of the Oklahoma Corporation Commission. I have been a commissioner of the OCC since January 9, 1989. Pursuant to Article

9, Section 17, I have taken my constitutional oath of office stating, in part, that "I will to the best of my ability, faithfully and justly execute and enforce the provisions of this Constitution, and all the laws of this State" concerning jurisdictional corporations. Article 9, Section 18 says the OCC has "the duty" of "regulating" and "correcting abuses."

4. The Honorable William S. Myers, Jr., District Judge, sitting as Special Master by order of the Oklahoma Supreme Court in Cause No. 80,333, issued his Report of Special Master on October 5, 1993. *See Exhibit 1* attached hereto. In his Report, p. 3, Judge Myers wrote in part:

Such evidence was that Commissioner Anthony had received illegal cash contributions (which he immediately gave to the FBI) from William Anderson, attorney for SWBT in PUD-260 and PUD-662 pending before the Commission during the period in question and from David Miller, SWBT's Vice President in Oklahoma for Governmental and Regulation Affairs and also a registered lobbyist for SWBT. The further evidence in this regard was that the cash was accompanied by false lists of contributors. This was given for the asserted purpose of having "access" to him, which was no more or no less than an effort to have him look with favor on their pending rate matters. (emphasis added)

5. Indeed, the statements put forth by Special Master Myers are substantiated and confirmed by copies of documents, filings, transcripts or recordings generated by, or once in the possession of, the Oklahoma City offices of the U.S. Attorney and the FBI, some of which are provided herewith.
6. OCC case files indicate Cause No. PUD 860000260 as it relates to SWBT (often called PUD 260) came before an Oklahoma Corporation Commission Hearing Officer ("ALJ") on January 26, 27, 30 and February 3, 1989.
7. At about 4 PM on February 2, 1989, Southwestern Bell Telephone Company Vice-President Dave Miller came to my Corporation Commission office. He attempted to engaged me in an illegal scheme to use methods he felt "wouldn't get traced." *See Exhibit 2* attached hereto, p. 8 of 10. His scheme to give me money was unlawful because he and his employer, SWBT, had interests subject

to regulation by the Corporation Commission. Among those interests was PUD 260 currently before the OCC ALJ. Also, Title 17, Section 177 of the Oklahoma Statutes (1981) did not even allow "contributions" to my recent political campaign after I became a commissioner upon taking my oath of office on January 9, 1989.

8. **Exhibit 2**, attached hereto, is a transcript of that February 2, 1989 meeting at the Oklahoma Corporation Commission between Southwestern Bell Vice-President Dave Miller and me, Robert H. Anthony (Commissioner Bob Anthony). For reference, the transcript has insertion of pages containing Title 17, Section 177 and Title 26, Sections 15-110 of the Oklahoma Statutes (1981). The transcript was prepared by the FBI and shows my handwritten edits. Miller stated:

"... but I also know what the law says." (p. 1)

"And I don't want anything to look like we're tryin' to buy votes, cause we're not trying to buy votes, we just don't, all we want is access to you, and I feel good about you being out here." (p. 1)

"And it will all be, will be names that'll be below two hundred dollars but the way I understand it, that once you're sworn in ... but once you're sworn in you really can't take money from us." (p. 2)

"Well the best way would probably be, we could do it in cash." (p. 2)

"It'll be individuals, and I may give you my daughter's name or my mother's name ... who lives in Oklahoma City or something like that?" (p. 3)

"And, and it wouldn't get traced...." (p. 6)

"... its a group that are professionals that work in this arena ..." (p. 5)

"... I would like to talk to you about some things, about regulations ..." (p. 7)

9. On February 21, 1989, more than six weeks after I had become a Corporation Commissioner and 43 days after Title 17, Section 177 (1981) prohibitions applied, SWBT Vice-President Dave Miller again came to my government office and handed me \$2,450 in cash. **Exhibit 3** shows my photocopy of the bills as well as my handwritten inventory of \$100 x 21 plus \$20 x 12 plus \$50 x 2 plus \$10 x 1 equaling **\$2,450 in cash.**

10. **Exhibit 4** hereof contains pages 1-3 of a transcript prepared by the FBI covering that February 21, 1989 conversation between Dave Miller and me at the Oklahoma Corporation Commission office building. Miller stated:

“Yeah, I mean it’s like myself [Dave Miler] and our lawyer [Glen Glass] and my boss [Royce Caldwell] ...” (p. 1)

“A bunch of names you can use too, whatever you wanna do with that.” (p. 1)

“Okay, it should be [\$]2450.” (p. 2)

11. When SWBT Vice President Dave Miller says, “A bunch of names you can use too, whatever you wanna do with that[,]” he is referring to the fourteen names listed in **Exhibits 5A, 5B, 5C and 5D** hereof. These Exhibits are photocopies I made of the five handwritten pieces of paper containing “false lists of contributors” that Dave Miller gave me on February 21, 1989. The lists of names accompanied the \$2,450 in cash I received from Dave Miller. Interviews by FBI agents as well as affidavits from fraudulently named individuals indicate that none of the listed fourteen alleged “contributors” was actually a source of any of the \$2,450. Many names were of relatives of a SWBT executive or a SWBT attorney. These lists have not previously been made public. As a cooperating witness, I gave the cash and originals of these lists to the FBI to use as evidence in its investigation. The handwriting on the lists appears to be that of four different individuals. Furthermore, it appears Southwestern Bell Vice-President Dave Miller did follow through with the unlawful scheme that he first presented to me on February 2, 1989. As indicated in **Exhibit 2**, Miller had earlier stated:

“It’ll be individuals, and I may give you my daughter’s name or my mother’s name ... who lives in Oklahoma City or something like that?”

12. **Exhibit 6** contains transcript pages from a deposition of Southwestern Bell Corporation attorney William J. Free taken in case PUD 662 itself. Transcript pages 10-11 indicate that from 1969 to 1974 Free was an attorney for SWBT in the Oklahoma City area office, and in addition, from 1979-1986, he was SWBT general attorney for the state of Oklahoma. On page 23, Free indicates that not only did he work with attorney Bill Anderson back in the earlier period of his employment in Oklahoma, Anderson was even loaning money to

him. On page 32 he clarifies, "From approximately July 1, 1990 until current, I am Senior Vice President and Associate General Counsel of Southwestern Bell Corporation." (Emphasis added.) Page 14 of Free's deposition transcript begins,

Q. During the time period 1988 to the present, did you know or were you aware that contributions were being made to the Oklahoma Corporation Commissioners?

A. The only thing I know is what I have read in the papers about allegations of contributions to commissioners.

13. To the best of my knowledge and belief **Exhibit 7** (May 31, 1991, *Tulsa World*) and **Exhibit 8** (June 5, 1991, *Tulsa Tribune*) are the earliest newspaper stories mentioning an FBI investigation of political campaign contributions to Corporation Commissioner Hopkins.

14. A letter dated February 5, 1991 addressed to Mr. William J. Free from William L. Anderson is provided as **Exhibit 9**. The letter is dated about three months **before** the newspaper articles shown by **Exhibits 7** and **8**, and its printed stationery reads "ANDERSON & WADDELL, P.C." with "ATTORNEYS AT LAW" shown beneath the law firm name. In 1991, Bill Anderson personally gave me a copy of this letter. In it Bill Anderson, SWBT attorney of record in PUD 260, brags about the results of his bribery to Southwestern Bell Corporation attorney William J. Free. On page 5 Anderson states, "Bell Telephone Company has been good to the Anderson family, and I like to hope that I have made you some money in the past, and do know that without my efforts you probably would not have been authorized to reinvest the tax over earnings on one-party upgrade rather than refund." On page 3 the letter states, "... I know from personal knowledge that he did not keep an agreement that he and I had made on behalf of Bell Telephone Company, which I kept, and, it cost me several thousands of dollars ..." On page 4 the letter to Bill Free states, "Bill, right now, Bell called in all of its politically "due bills" and then some, in the tax docket [PUD 260], when we secured [a]uthority to invest the excess earnings in rural upgrade rather than refund."

15. Furthermore, on November 21, 1994 during the Federal bribery trial of Commissioner Bob Hopkins (Case No. CR-93-137-A), FBI Special Agent

John Hippard testified regarding a Title III FBI wiretap of a March 19, 1991 conversation between SWBT attorney of record in PUD 260 Bill Anderson and Southwestern Bell Corporation Vice President and Assistant General Counsel Bill Free. An excerpt of the wiretap recording was introduced as "Government's Exhibit No. 211" and was played for the jury. The tape is currently located in the Oklahoma City office of the FBI. **Exhibit 10** is pages from Volumes IV, V and VI of the Reporter's transcript of the trial proceedings, and it contains references to this wiretap recording of Bill Anderson's telephone call received by Bill Free at his residence in St. Louis at 7:09 pm on March 19, 1991. In the conversation attorney Bill Anderson talks to attorney Bill Free about Southwestern Bell efforts to "pay off Hopkins." Anderson mentions the retainer of \$5,000.00 per month he has been receiving as an attorney for Southwestern Bell. He also mentions the FBI. Anderson says that [Glen] "Glass knew the whole deal." He goes on to say, "We all knew." Referring to Southwestern Bell officials Dave Miller, Glen Glass, and Royce Caldwell, Anderson says, "They all knew we were trying to work something." Anderson tells Bill Free, "Royce said he didn't want to know the details." Anderson continues quoting Royce Caldwell [Oklahoma Division president of SWBT from October 1988 to December 1989 according to Caldwell PUD 662 deposition] as having said, "Do it and don't let me know how you do it." [After Caldwell left Oklahoma, he went to St. Louis, MO and after July 1992 served as a Southwestern Bell Corporation Executive Policy Council Officer and President of Southwestern Bell Services.] (emphasis added)

16. Note that the **Exhibit 9** letter from Anderson to Free is dated February 5, 1991, and the **Exhibit 10** FBI wiretapped conversation between Anderson and Free occurred on March 19, 1991. However, the **Exhibit 6** transcript of the Free deposition in PUD 662 on page 14, lines 5-7 quotes Free's sworn testimony, "The only thing I know is what I have read in the papers about allegations of contributions to commissioners." Again, to the best of my knowledge and belief (5/31/1991, *Tulsa World*) and (6/5/1991, *Tulsa Tribune*) are the earliest newspaper stories mentioning an FBI investigation of political campaign contributions to Corporation Commissioner Hopkins. See again **Exhibits 7 and 8.**

17. **Exhibit 11** is pages from the 1992 Annual Report of Southwestern Bell Corporation listing its Directors, Officers and Executives. William J. Free (Vice President and Assistant General Counsel) and Royce S. Caldwell (President of Southwestern Bell Services) are both shown as officers of Southwestern Bell Corporation, then headquartered in St. Louis, Missouri.
18. On August 3, 1989, Bill Anderson, SWBT attorney of record in the PUD 260 case, met with me privately in Oklahoma City. A partially redacted transcript of our conversation was obtained from the FBI through a Freedom of Information request, and pages 13-14 are shown in **Exhibit 12**. Regarding the PUD 260 case specifically, SWBT attorney Bill Anderson stated, "The test year doesn't touch the top side involved in any of the issues." (page 13) Noting that the Hearing Officer in the PUD 260 case filed his report two months earlier on June 2, 1989, I interpreted this comment by SWBT attorney of record Bill Anderson to be a direct statement about the low determination for "revenue excess" in PUD 260 by the OCC Staff and the Hearing Officer.
19. The 1989 bribery activities surrounding PUD 260 were not exclusively directed at Commissioner Bob Hopkins. For example, FBI records show that on September 15, 1989 Bill Anderson, then an attorney of record for SWBT in PUD 260, told me (Commissioner Bob Anthony) by telephone that he had **\$7,500 for me in a briefcase in the trunk of his car**. On September 18, 1989, Anderson once again told me he had \$7,500 in cash for me, to be used politically or otherwise. These felonious offers occurred only a few days before the September 20, 1989 vote on the PUD 260 order.
20. Circa 760 B.C., the prophet Amos (5:12, 5:15) speaks of "bribes" and subsequently offers the imperative to "... maintain justice in the courts."(NIV)
21. Based upon the evidence set forth herein, I believe that SWBT's pervasive actions in seeking to bribe the Oklahoma Corporation Commissioners in relation to PUD 260 were a deliberate scheme to fundamentally corrupt and defraud the Oklahoma Corporation Commission, the Oklahoma Supreme Court and the Citizens of the State of Oklahoma.

FURTHER AFFLIANT SAYETH NAUGHT!

Bob Anthony  
Commissioner Bob Anthony

Subscribed and sworn to before me this 8<sup>th</sup> day of July, 2014



Joyce L. Conner  
Notary Public  
Commission No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF )  
HOWARD W. MOTLEY, JR., FOR AN INQUIRY ) CAUSE NO. PUD 000260  
INTO THE EFFECT OF THE 1986 TAX REFORM )  
ACT ON OKLAHOMA UTILITIES. )

DISSENTING OPINION OF CHAIRMAN BOB ANTHONY  
TO ORDER NO. 341630

**FILED**  
SEP 27 1989

SECRETARY  
CORPORATION COMMISSION  
OF OKLAHOMA

Chairman Bob Anthony, Dissenting.

I respectfully dissent from the majority position which, in final form, gives only minor or indirect benefit to the overwhelming majority of telephone customers who paid most of the overcharge. Just on principal, I believe some or all of the overcharge should be refunded to the broad base of telephone customers. Also, I feel a larger total amount could have been determined. (Particularly if no refund is to be made, a higher interest rate could have been applied. The "risk free" one year U.S. Treasury Bill yield gives a suitable rate for cash held only a short period before it is returned, but this "risk free" rate makes less sense for money kept to be invested in an equipment upgrade.) Furthermore, the financial information regarding Southwestern, Bell Yellow Pages was terribly inadequate, and a higher profit amount could have been determined.

In general, I question the basic logic of the approach which was taken by the majority, but four calendar years of dealing with this matter should be enough. It is sad if Oklahoma has become the last state in the Union to resolve the tax overcharge issue with its Bell Telephone Company.

  
\_\_\_\_\_  
Bob Anthony, Chairman